# IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 274 OF 2006

IN

STAMP NUMBER MAIN NO. 1810 OF 2006

SHRI PUTU RAGOBA PAGI, ....Applicant
CANACONA-GOA.

Versus

PRAMOD BABI GAONKAR (DECEASED) AND ....Respondents
7 ORS.,

Mr. A. D. Bhobe, Advocate for the Applicant.
Mr. P. A. Kamat, Advocate for Respondent nos. 3 and 5.
Ms. Winnie Coutinho, Public Proseccutor for Respondent no.8.

Coram:- N. A. BRITTO, J.

Date:- 13th September, 2006

ORAL ORDER

The applicant is the Complainant in C.C. no.35/P/2001. The said Complainant has sought special leave to appeal against the acquittal of the accused under Sections 143, 147, 504, 447, 506(ii) read with Section 149 of I.P.C. by Order dated 05.05.06, of the learned J.M.F.C., Canacona.

2. Heard Shri A. D. Bhobe, the learned Counsel on behalf of the Complainant and Shri P. A. Kamat, the learned Counsel on behalf of respondent nos 3, 4, 5 and 6.

3. There is a property at Colomb, Canacona, which has been surveyed in the name of Amalia Rodrigues Gomes e Figueiredo, under survey no.80/1, in Form No. I and XIV. It appears that the applicant has a house

in the said property wherein he resides and his father has been shown as a caretaker along with 21 others in relation to the said property. It appears that there was an incident on 14.10.2001 or thereabout when it was alleged that respondent no.1 dumped some stones blocking the access of the Complainant in respect of which, the Complainant had filed a complaint to the police but the Complainant was informed that his complaint was of civil nature. Alleging that the complainant was a tenant in respect of a part of the property surveyed under no.80/1 of VIllage Nagarcem, Palolem, Canacona Taluka, a complaint was filed in respect of the incident, which according to the Complainant, took place on 14.10.2001. As per the Complainant, on 14.10.2001, being a Sunday at about 3.45 p.m., the respondent nos. 1 to 7 (one of whom is dead and two of whom are absconding), came to his residential house nicknamed Bungalow situated at Colomb, and demolished his bamboo fencing, (decorated with bamboos) and invaded the restaurant, broke the chairs and threatened the tourists to go away and also demolished his tents/residential huts and threw some materials from the huts into the sea. It was also alleged that deceased respondent no.1 was their leader and was hurling abusive words on caste lines such as "Pagut" and threatened him with dire consequences in case the Complainant disrupted their activities. It was further alleged that the accused had threatened to destroy the house of the Complainant by bursting gelatin sticks during the night.

4. The Complainant in support of his case, examined himself and his son Rajesh Kankonkar/P.w.2 and an employee Prakash Parit/P.w.3, who according to the Complainant at the time of the incident, was painting his said bungalow.

5. Apart from producing Form No.I and XIV from which his father's name can be seen recorded as a caretaker along with 21 others, the Complainant has not produced any document either to prove the ownership or possession either in respect of the Shack he claims he owns or the bungalow which is stated to have been owned by the owners of the said property. Although the incident took place on 14.10.2001, the

complaint came to be filed only on 24.10.2001 i.e. ten days later. Although the Complainant stated that he had filed a police complaint and had cited the I.O. as witness no.3, on the list of witnesses, the Complainant did not produce any copy of the complaint filed by him nor examined the said I.O. in support of the fact that the Complainant had filed the said complaint. In the circumstances, adverse inference as regards non filing of the said complaint was bound to be drawn against the Complainant. The learned J.M.F.C. has looked at the complaint and, in my view rightly, with some amount of suspicion, considering that there was delay in filing the same. Although the Complainant examined his own son to support his case, the said son Rajesh Kankonkar, in fact does not support the case of the Complainant at all. In fact Rajesh Kankonkar/P.w.2 stated that he did not even know whether the said bungalow was in possession of the owner of the property or whether the said owners were staying in the said bungalow. If the Shack run by the Complainant was situated adjacent to the said bungalow owned by the said owners of the property, Rajesh Kankonkar/P.w.2 certainly ought to have known about the same. Rajesh Kankonkar also stated that he did not recollect whether on 14.10.2001, there was plucking of the property by Simon Tavares of survey no. 80/1. He also did not know whether the said Simon Tavares was doing all the work in survey no.80/1 at the instance of the owners. Prakash Parit/P.w.3 also did not in turn corroborate the case deposed by the Complainant. Whether Prakash Parit/P.w.3 had referred to the fencing as a gallery or not was not of much significance considering his evidence on the whole which did not support the case of the Complainant.

6. The Complainant has produced no documents whatsoever in support of his case that he had title of any kind to the said Shack or the place on which he was carrying on business in the said property of the said owners. It appears that there is dispute between the Complainant's possession in relation to the said property. The Complainant's case was not substantiated at all. The conclusion arrived at by the learned J.M.F.C.,

could not be faulted. This is not a fit case to grant special leave. Application for special leave is therefore dismissed.

N. A. BRITTO, J.

arp/*